

Karmat Ullah Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Oct-29-2008

Reported in : 2008(3)JKJ319

Judge : Sunil Hali, J.

Appellant : Karmat Ullah

Respondent : State and ors.

Judgement :

Sunil Hali, J.

1. Through this Habeas Corpus Petition, the petitioner seeks quashment of detention Order No. 04 of 2008 dated 17,05,2008 passed by District Magistrate, Rajouri under Section 8 of the J&K; Public Safety Act, 1978.

2. The grounds of detention reveal that the petitioner remained associated with the local terrorists of HM outfit known with code name Jannisar and HM Commander Ab-Saqib. The main object of this organization is to spread separatist feelings among the public at large in J&K; State and in India. The petitioner being an overground worker of HM terrorist, was found involved in aiding and abetting terrorism by financing and providing food and shelter to the militants. The detention order reveals that in the month of July and September, 2007 terrorist of HM outfit code name Jannisar visited his house who took meal and agreed to work

with them as OGW. In 2008 terrorist visited his house to whom he provided food and shelter for the night and received cash worth Rs. 1.37 lac for delivery to Zulfikar Zulfi of village Karag whose brother code Abu Museeb was killed by security forces during January, 2008 in Kandi area. He delivered the cash worth Rs. 1.24 lacs as first instalment to Zulfi. Next instalment of Rs. 13,000/- was given by him on 5th March 2008 and exchanged a pair of shoe of No. 8 and 7 size. He was providing food and shelter, mobile phones, cloths, shoes and dealing in the transaction of hawala money to boost the militancy related activities.

3. The detention order also reveals that the petitioner was arrested in case FIR No. 17/2008 under Sections 121/122/120-B/212/216 RPC and 3/EAO of Police Station, Kandi and pair of action shoe, No. 7,10 hand phones (Nokia), one shirt, one trouser, cash sim cards meant for distribution to the terrorist were recovered from his possession. As a consequence of that he was detained under the provisions of J&K; Public Safety Act.

4. The petitioner has questioned the order of detention on the following grounds:

- a) That there is no application of mind by the District Magistrate while framing order of detention;
- b) That no copy of dossier was provided to the petitioner which prevented him from making an effective representation against the order of detention.

5. Respondents have filed the objections stating therein that the petitioner-detenu was taken in custody on 24.05.2008 and lodged in District Jail, Rajouri. The detention order and the grounds of detention were read over and explained to him in the language which he understands. The said detention was approved vide Order No. Home/PB-V/1217/2008 dated 23.05.2008 and the detenu did not represent against the said order. It is also stated by the respondents that the action of the District Magistrate was approved by the Advisory Board.

6. I have heard learned Counsel for the parties and perused the record. The grounds of detention reveal that the petitioner was an associate of HM commander. The detention order also makes mention of the dates on which he

contacted the other over ground workers and the dates on which he contacted the HM Commander as also number of phone calls which he made from his mobile to the HM Commander. However, it is revealed that the material on the basis of which dossier has been prepared, has not been supplied to the petitioner, though the grounds of detention clearly mentioned his role and the illegal activities committed by him. The dossier on the basis of which such grounds of detention were prepared, was required to be supplied to the petitioner so that he could be able to make representation.

7. I have examined the record produced by the respondents. There is no mention of the fact that the dossier/material, on the basis of which the petitioner was detained, was not provided to him. Thus in my view it prejudiced the petitioner from making any effective representation. This Court while exercising powers under the scope of judicial review is not to sit in appeal over the detention order nor the court is to re-appreciate the materials which were the basis of detention order. However, the court is required to see whether there was proper application of mind on the part of the detaining authority and that all the relevant and vital materials for the purpose, were noticed adverted to and considered by it.

8. In the present case, the order of detention is based upon the material which was not supplied to the petitioner. The material is in the shape of FIR, CID report and other such material which became the basis of his detention under the Public Safety Act. The object of supplying this material to him is to ensure that he could be made aware of the grounds of detention alongwith the material. This safeguard is provided under Article 22(5) of the Constitution of India. There are two types of detention. One is preventive detention and other is where the person detained can apply for bail as per the law of the land. Under the preventive detention the man is detained without any trial. There should be sufficient material on the basis of which his detention could be ordered.

9. The petitioner has relied upon the judgment of this Court reported in 2002 (2) SLJ 527 entitled Ghulam Mohammad Dar v. State of J&K; and Ors. In this case, the court has held that non-supplying of grounds of detention and the material relied upon by the detaining authority to the detenue amounts to depriving him of

an opportunity of making a representation against the order of detention.

10. For the reasons stated hereinabove, I allow this petition and quash detention Order No. 04 of 2008 dated 17.05.2008 issued against the petitioner.

11. Before parting with this judgment, I find that the order of detention was issued by the District Magistrate, Rajouri without supplying the material to the petitioner-detenu on the basis of which his detention order was issued which has become a ground for ordering his release. Why such material was not supplied to him, is a matter of great concern, when the order has the effect of detaining a person without trial. It seems that the District Magistrate before issuing the order of detention did not look into this aspect of the matter that whether there had been sufficient compliance of the provisions of law. In such circumstances even the persons against whom there are sufficient evidence for their having been involved in anti-national activities go scot free impinging on the security of the State. I do not want to further comment on this but the fact of the matter is that invariably orders of detention are issued without complying with the requirement of law advertently or inadvertently. I hope that the concerned District Magistrate will ensure that in future such lapses are not committed by him.

Disposed of along with connected CMP(s), if any.